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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE CONTRERAS,

Defendant and Appellant.

B169390

(Los Angeles County
Super. Ct. No. BA234321)

APPEAL from a judgment of the Superior Court of Los Angeles County,
David Mintz, Judge. Affirmed.

John Hardesty, under appointment by the Court of Appeal, for Defendant
and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General,
Susan D. Martynec and Alan D. Tate, Deputy Attorneys General, for Plaintiff and
Respondent.

Jesse Contreras appeals from judgment entered following a jury trial in which he was convicted of attempted murder (Pen. Code, §§ 664, 187, subd. (a)), assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), carjacking (Pen. Code, § 215, subd. (a)) and robbery and true findings that he personally used a knife within the meaning of Penal Code section 12022, subdivision (b)(1) and personally inflicted great bodily injury within the meaning of Penal Code section 12022.7, subd. (a).) Additionally, the jury found the attempted murder was willful, deliberate, and premeditated and the robbery was in the second degree. Sentenced to prison for a total of seven years to life, he contends the evidence is insufficient to support the carjacking conviction. For reasons stated in the opinion, we affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

On January 9, 2002, Jonathan Estrada was celebrating his birthday with friends at his home in Echo Park. Estrada, appellant, “Pablo,” and Jose Lagunas hung out on Estrada’s porch, drinking liquor and eating. After approximately 20 or 30 minutes, Lagunas drove the others to buy marijuana and then to Elysian Park, where they drank and smoked “pot.” While driving to the park, appellant told Lagunas that he had read about the human body’s weak points and that if someone was stabbed in the neck or in the chest area he would die instantly. At the park, Estrada did not look well. He was laying down on the back seat of the car, throwing up. Lagunas and the others took Estrada home and then returned to Elysian Park. Lagunas parked his car and he, appellant, and Pablo walked about three blocks into the park. Lagunas suggested the area was a good place to hang out some other time, to throw a barbecue or have a good time. Pablo and appellant looked like they were “high” and the three stayed at the spot in the park for about

10 or 15 minutes. It was around six or seven o'clock at night; it was already getting dark, and Lagunas decided to walk back towards the car. Appellant and Pablo were right behind him when he heard "running footsteps." Lagunas turned slightly and that is when he felt the stab to his neck. Lagunas was in shock. He turned around and saw appellant with the knife in his hand. The knife was a simple switchblade knife, with a blade five to seven inches long. Earlier that day, Lagunas and Pablo had been with Estrada when Estrada bought the knife downtown. Lagunas was in pain and was bleeding. He tried to stop the bleeding with his fingers. Appellant then asked Lagunas for his wallet and keys and Lagunas immediately threw them to appellant. Lagunas asked appellant to stop, to let him go, and appellant stabbed Lagunas in the lower abdomen three times and once in the hand while Lagunas was trying to defend himself. When appellant bent down to pick up the keys and wallet, Lagunas ran towards his truck. Approximately two or three blocks ahead, he heard the alarm go off on his truck. He ran to cars and houses looking for help and eventually found someone to call 911 for him. While sitting on the steps of a residence, Lagunas saw appellant and Pablo drive by in Lagunas's truck with the alarm sounding. Lagunas was transported to the hospital where he underwent surgery for his various stab wounds. Lagunas never touched appellant or grabbed him in the groin.

DISCUSSION

Appellant contends the evidence is insufficient to support the carjacking conviction in that it does not support the jury's finding that Lagunas's vehicle was taken from his immediate presence.

Penal Code section 215, subdivision (a) provides: "'Carjacking' is the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence . . . against his or her will and with the intent to

either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear.”

The jury was instructed “‘Immediate presence’ means an area within the alleged victim’s reach, observation or control, so that he or she could, if not overcome by violence or prevented by fear, retain possession of the subject property.”

“While a distinct crime from robbery, the elements and statutory language of carjacking are analogous to those of robbery, and the ‘taking’ language of the carjacking statute is framed in identical language to the robbery statute. We therefore presume the Legislature intended the carjacking statute to “‘be given a like interpretation.’” [Citations.]” (*People v. O’Neil* (1997) 56 Cal.App.4th 1126, 1131.)

“‘The statute requires force or fear to be applied to the driver . . . clearly a confrontation must occur. . . . [But] the victim need not actually be physically present in the vehicle when the confrontation occurs.’” (*People v. Hoard* (2002) 103 Cal.App.4th 599, 608, fn. omitted.)

In *People v. Webster* (1991) 54 Cal.3d 411, the defendant claimed the robbery evidence was insufficient because (among other reasons) there was no proof that property was taken from victim Burke’s “person or ‘immediate presence.’” The Supreme Court noted that it previously had held that ““‘[a] thing is in the [immediate] presence of a person, in respect to robbery, which is so within his reach, inspection, observation, or control, that he could, if not overcome by violence or prevented by fear, retain his possession of it. [Citations.]’”” [Citations.] The zone of immediate presence includes the area ‘within which the victim could reasonably be expected to exercise some physical control over his property.’ [Citations.]” (*Id.* at p. 440.)

In its analysis, the court observed, “The distance between Burke’s auto and the murder scene was not so great as to violate these standards as a matter of law. Defendant, Madrigal, Williams, and Burke had brought the car from a remote location to the ‘Fag Beach’ lot, which apparently was a common and convenient public parking spot for persons using the nearby riverbank. Burke and the three other men then walked the relatively short distance to the riverbank campsite--a mere quarter of a mile by defendant's own calculation. Like Burke, the robbers were on foot, and they were no closer to the car at the moment they assaulted Burke than was Burke himself. There was no evidence that Burke was too far away to perceive and resist an attempt to seize the vehicle. [¶] The jury could thus reasonably infer that but for defendant’s attack, Burke’s relative proximity to the car would have allowed him to take effective physical steps to retain control of the vehicle, and to prevent defendant and his companions from stealing it.” (*People v. Webster, supra*, 54 Cal.3d at p. 440.)

Here a confrontation occurred when appellant demanded Lagunas’s keys and Lagunas threw them at appellant. This was in Lagunas’s immediate presence. Since the jury could reasonably infer that had Lagunas not been repeatedly stabbed by appellant at that time, his relative proximity to the truck would have allowed him to take effective physical steps to retain control of the vehicle and prevent defendant and his companions from stealing it. Appellant argues “[b]y no stretch of the imagination was Lagunas in a position to exercise any physical control over his vehicle, which was located outside the park, three blocks away.” Of course Lagunas was not in such a position since appellant’s stabbing of him as he walked back to his car prevented him from reaching the car and retaining physical control over it. This violence accomplished the taking from Lagunas. (See *People v. Coryell* (2003) 110 Cal.App.4th 1299, 1303; *People v. Hoard, supra*, 103 Cal.App.4th at p. 609; *People v. Webster, supra*, 54 Cal.3d 411, 440-441.)

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P.J.

We concur:

HASTINGS, J.

CURRY, J.